

Appl. No. 10/026,092
Amdt. Dated September 21, 2004
Reply to Office Action of August 26, 2004

REMARKS

The claims have been amended to recite even more clearly the structures forming applicant's apparatus.

None of the prior art, taken alone or in combination discloses the apparatus.

The Examiner is estopped from Taking of bits and pieces from various references to fill applicant's mold comprises use of illegal hindsight reconstruction and the rejection cannot stand.

Here the Examiner is directed to the decisions in Rockwell International Corp v. United States, 147 F.3d 1358, 47 U.S.P.Q.2d 1027, 1032 (Fed. Cir. 1998):

"In order to render a claimed apparatus or method obvious, the prior art must enable one skilled in the art to make and use the apparatus or method."
Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988):

"A proper combination of references requires the presence of a teaching or suggestion in any of the references, or in the prior art as a whole, that would lead one of ordinary skill in the art to make the combination. The mere fact that a device or process utilizes a known scientific principle does not alone make that device or process obvious."

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The mere fact that one reference shows A, another reference shows B, etc., does not make applicant's apparatus obvious because not one of the prior art references suggests, let alone motivates, anyone looking at the references, to try the combination, unless one is trying to fill the mold of applicant's disclosure.

Here see Datascope Corp., v. SMEC, Inc., 776 F.2d 320, 227 USPQ 838 (Fed. Cir. 1985):

"Whether prior art disclosures could physically be substituted in a combination like that claimed in the patent is irrelevant in determining obviousness under Section 103."

Hartness International, Inc., v. Simplimatic Engineering Co., 819 F.2d 1100, 2 USPQ2d 1826 (Fed. Cir. 1987):

"In determining obviousness, "the inquiry is not whether each element existed in the prior art, but whether the prior art made obvious the invention as a whole for which patentability is claimed."

Further, anticipation also cannot be found inasmuch as applicant's exact structure cannot be found in any single prior art reference, let alone can any such structure be found as arranged in applicant's claims.

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Here see Structural Rubber Prod. Co., v. Park Rubber Co.,
749 F.2d 707, 223 USPQ 1264 (Fed. Cir. 1984):

"Anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention. Anticipation is not shown even if, ... the differences between the claims and the prior art references are "insubstantial" and the missing elements could be supplied by the knowledge of one skilled in the art."

An earnest endeavor has been made to place the application in condition for allowance and an early action to that end is awaited.

Respectfully submitted,



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